

The Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEA MAR COMMUNITY HEALTH
CENTERS,

Plaintiff,

v.

ACCREDITATION COUNCIL FOR
GRADUATE MEDICAL EDUCATION,

Defendant.

CASE NO. 2:24-CV-00896-JNW

STIPULATED PROTECTIVE ORDER

NOTE ON MOTION CALENDAR:
JULY 16, 2024

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: resident and faculty surveys; non-public communications
4 among Accreditation Council for Graduate Medical (“ACGME”) personnel; non-public
5 documents concerning the February 20, 2024 site visit; non-public documents reflecting
6 ACGME’s Family Medicine Review Committee’s deliberations and comments with respect to Sea
7 Mar Community Health Centers’ (“Sea Mar’s”) accreditation status; non-public summaries of Sea
8 Mar’s family medicine residency program created or compiled by ACGME; documents or
9 materials edited or created by ACGME personnel during or after the February 20, 2024 site visit
10 that include the names or identifying details of residents or faculty members in Sea Mar’s family
11 medicine residency program (*e.g.*, descriptions that make such a resident’s or faculty member’s
12 identity obvious to someone familiar with the program); and communications from Sea Mar
13 residents or faculty members to ACGME personnel that do not also include Sea Mar leadership
14 members as recipients.

15 3. SCOPE

16 The protections conferred by this agreement cover not only Confidential material, but also
17 (1) any information copied or extracted from Confidential material; (2) all copies, excerpts,
18 summaries, or compilations of Confidential material; and (3) any testimony, conversations, or
19 presentations by parties or their counsel that might reveal Confidential material.

20 However, the protections conferred by this agreement do not cover information that is in
21 the public domain or becomes part of the public domain through trial or otherwise.

22 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

23 4.1 Basic Principles. A receiving party may use Confidential material that is disclosed
24 or produced by another party in connection with this case only for (1) prosecuting, defending, or
25 attempting to settle this litigation or (2) in connection with Sea Mar’s pending internal appeal
26 before the ACGME Appeals Panel with respect to the accreditation of Plaintiff’s family medicine

1 residency program. For avoidance of doubt, nothing in this provision or in any other part of this
2 Protective Order affects the ACGME's policies applicable to Sea Mar's internal appeal or to the
3 scope of evidence that may be considered in that appeal. Confidential material may be disclosed
4 only to the categories of persons and under the conditions described in this agreement. Confidential
5 material must be stored and maintained by a receiving party at a location and in a secure manner
6 that ensures that access is limited to the persons authorized under this agreement.

7 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
8 by the court or permitted in writing by the designating party, a receiving party may disclose any
9 Confidential material only to:

10 (a) the receiving party's counsel of record in this action, as well as employees
11 of counsel to whom it is reasonably necessary to disclose the information for this litigation or in
12 connection with Sea Mar's pending internal appeal before the ACGME Appeals Panel with respect
13 to the accreditation of Plaintiff's family medicine residency program;

14 (b) the officers, directors, and employees (including in-house counsel) of the
15 receiving party to whom disclosure is reasonably necessary for this litigation or in connection with
16 Sea Mar's pending internal appeal before the ACGME Appeals Panel with respect to the
17 accreditation of Plaintiff's family medicine residency program, unless the parties agree that a
18 particular document or material produced is for Attorneys' Eyes Only and is so designated;

19 (c) experts and consultants to whom disclosure is reasonably necessary for this
20 litigation or in connection with Sea Mar's pending internal appeal before the ACGME Appeals
21 Panel with respect to the accreditation of Plaintiff's family medicine residency program and who
22 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (d) the court, court personnel, and court reporters and their staff;

24 (e) the Appeals Panel, ACGME personnel, any staff supporting or attending the
25 hearing or disposition of Sea Mar's internal appeal of its family medicine residency program's
26 accreditation status before ACGME, and any transcription service provider retained to

1 memorialize the hearing;

2 (f) copy or imaging services retained by counsel to assist in the duplication of
3 confidential material, provided that counsel for the party retaining the copy or imaging service
4 instructs the service not to disclose any Confidential material to third parties and to immediately
5 return all originals and copies of any Confidential material;

6 (g) during their depositions, witnesses in the action to whom disclosure is
7 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
8 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
9 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
10 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
11 under this agreement;

12 (h) the author or recipient of a document containing the information or a
13 custodian or other person who otherwise possessed or knew the information.

14 4.3 Filing Confidential Material. Before filing Confidential material or discussing or
15 referencing such material in court filings, the filing party shall confer with the designating party,
16 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
17 remove the Confidential designation, whether the document can be redacted, or whether a motion
18 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
19 designating party must identify the basis for sealing the specific Confidential information at issue,
20 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
21 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
22 the standards that will be applied when a party seeks permission from the court to file material
23 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
24 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
25 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
26 the strong presumption of public access to the Court’s files.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
3 or non-party that designates information or items for protection under this agreement must take
4 care to limit any such designation to specific material that qualifies under the appropriate
5 standards. The designating party must designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify, so that other portions of the
7 material, documents, items, or communications for which protection is not warranted are not swept
8 unjustifiably within the ambit of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
11 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
12 and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated for
14 protection do not qualify for protection, the designating party must promptly notify all other parties
15 that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this
17 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
18 ordered, disclosure or discovery material that qualifies for protection under this agreement must
19 be clearly so designated before or when the material is disclosed or produced.

20 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
22 the designating party must affix the word "CONFIDENTIAL" to each page that contains
23 Confidential material. If only a portion or portions of the material on a page qualifies for protection,
24 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
25 markings in the margins).

26 (b) Testimony given in deposition or in other pretrial proceedings: the parties

1 and any participating non-parties must identify on the record, during the deposition or other pretrial
2 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
3 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
4 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
5 exhibits thereto, as Confidential. During the period from the time the testimony is given until the
6 end of the fifteen-day period following receipt of the transcript, the entirety of the transcript shall
7 be treated as Confidential. If a party or non-party desires to protect Confidential information at
8 trial, the issue should be addressed during the pre-trial conference.

9 (c) Other tangible items: the producing party must affix in a prominent place
10 on the exterior of the container or containers in which the information or item is stored the word
11 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
12 the producing party, to the extent practicable, shall identify the protected portion(s).

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
14 designate qualified information or items does not, standing alone, waive the designating party’s
15 right to secure protection under this agreement for such material. Upon timely correction of a
16 designation, the receiving party must make reasonable efforts to ensure that the material is treated
17 in accordance with the provisions of this agreement.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
20 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
22 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
23 challenge a confidentiality designation by electing not to mount a challenge promptly after the
24 original designation is disclosed.

25 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
26 regarding confidential designations without court involvement. Any motion regarding confidential

designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as Confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose Confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential

1 material to any person or in any circumstance not authorized under this agreement, the receiving
2 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
3 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
4 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
5 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
6 Bound” that is attached hereto as Exhibit A.

7 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
8 MATERIAL

9 When a producing party gives notice to receiving parties that certain inadvertently
10 produced material is subject to a claim of privilege or other protection, the obligations of the
11 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
12 is not intended to modify whatever procedure may be established in an e-discovery order or
13 agreement that provides for production without prior privilege review. The parties agree to the
14 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

15 10. NON TERMINATION AND RETURN OF DOCUMENTS

16 Within 60 days after the termination of this action, including all appeals, each receiving
17 party must return all Confidential material to the producing party, including all copies, extracts
18 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
19 destruction.

20 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
21 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
22 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
23 product, even if such materials contain Confidential material.

24 The confidentiality obligations imposed by this agreement shall remain in effect until a
25 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: July 16, 2024

/s/ Matthew P. Gordon

Attorneys for Plaintiff

4 DATED: July 16, 2024

/s/ Vanessa Soriano Power

Attorneys for Defendant

7 PURSUANT TO STIPULATION, IT IS SO ORDERED

8 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
9 documents, electronically stored information (ESI) or information, whether inadvertent or
10 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
11 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
12 documents, including the attorney-client privilege, attorney work-product protection, or any other
13 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
14 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
15 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
16 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
17 segregation of privileged and/or protected information before production. Information produced
18 in discovery that is protected as privileged or work product shall be immediately returned to the
19 producing party.

21 DATED: July 17th 2024

22 

23 Jamal N. Whitehead

24 United States District Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on [date] in the
 case of *Sea Mar Community Health Centers v. Accreditation Council for Graduate Medical
 Education* (No. 2:24-cv-896). I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
 not disclose in any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____